



**EUROPEAN COMMISSION**  
DIRECTORATE-GENERAL JUSTICE AND CONSUMERS

Director-General

Brussels, 4 August 2022  
JUST.C.4/AV

Nienke Palstra,  
Global Witness  
Rue Belliard 53  
1000 Bruxelles  
Belgium

**Sent by e-mail to:** [ask+request-11320-d7e106a1@asktheeu.org](mailto:ask+request-11320-d7e106a1@asktheeu.org)

**Subject: Your application for access to documents – GESTDEM 2022/3019**

Dear Ms. Palstra,

We refer to your request for access to documents of 24 May 2022, registered under the above-mentioned reference number.

You request access to “All documents—including but not limited to correspondence, emails, minutes, notes (hand written or electronic), audio or video recordings, verbatim reports, operational conclusions, lines to take, briefings, and presentations related to the meeting on 2022-03-30 between Geneviève Tuts and Lucrezia Busa and Meta Platforms Ireland Limited and its various subsidiaries (f/k/a Facebook Ireland Limited).”.

We have identified the following documents that corresponds to your request:

1. Briefing for meeting with Meta (Ares(2022)5582402);
2. E-mail exchange with Meta (Ares(2022)5600316).

**Assessment of identified documents**

Following an examination of the documents, I have come to the conclusion that document 1 may be partially disclosed. Full disclosure is prevented by exceptions to the right of access

laid down in Article 4 of Regulation (EC) No 1049/2001<sup>1</sup>, notably Article 4(1) third indent, Article 4(2) second indent and Article 4(3).

First, Article 4(1), third indent, provides that *"the institutions shall refuse access to a document where disclosure would undermine the protection of [...] the public interest as regards [...] international relations."* Some of the redacted parts concern the ongoing negotiations with the United States on a successor arrangement to the Privacy Shield. We consider that making the redacted parts public would seriously prejudice the mutual trust between the European Union and the United States, both as regards the ongoing talks on a new transatlantic data transfer framework after the invalidation of the EU-U.S. Privacy Shield by the Court of Justice of the European Union and other transatlantic files. After the invalidation of the European Commission's adequacy decision 2016/1250 regarding the EU-U.S. Privacy Shield, the European Commission and the U.S. Department of Commerce are in negotiations on a strengthened transatlantic data transfer framework to comply with the judgement of the Court of Justice. In light of these ongoing talks, it is important to protect the credibility of the European Commission as a negotiating partner. Establishing and protecting an atmosphere of mutual trust is a delicate exercise and any breach of that trust can have a serious adverse effect on the ongoing talks as well as future cooperation.

Second, in accordance with Article 4(3), *"access to a document, drawn up by an institution for internal use [...], which relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure"*. It follows from the case-law of the General Court that the exception in Article 4(2), third indent, of Regulation 1049/2001 applies if disclosure of the documents in question may endanger the completion of inspections, investigations or audits (Judgment of 6 July 2006, *Franchet and Byk v Commission*, T-391/03 and T-70/04, paragraphs 109 and 110). The exception may also be invoked with respect to investigations carried out by national authorities (Judgment of the General Court of 12 May 2005 in case T-623/13, *Unión de Almacenistas de Hierros de España v Commission*, paragraph. 44). In this case, some of the redacted parts contain information about ongoing investigations by national data protection authorities and related discussions at the level of the European Data Protection Board, which are treated as confidential by the Board in accordance with Article 76(1) of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation). There is a foreseeable risk that making the information public would interfere with the task of national data protection authorities to independently and effectively investigate and enforce compliance with the General Data Protection Regulation, as it would expose the authorities and the European Data Protection Board to the foreseeable risk of coming under outside pressures. Moreover, disclosing the information would seriously affect the climate of mutual trust between the Commission and the European Data Protection Board. The exception laid down in Article 4(2), third indent of Regulation 1049/2001 must be waived if there is an overriding public interest in disclosure. Such an interest must, firstly, be public and, secondly, outweigh the harm caused by disclosure. In your request, you do not put forward any reasoning pointing to an overriding public interest in disclosing the document requested. Nor have we been able to identify any public interest

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<sup>1</sup> Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents

capable of overriding the public and private interests protected by Article 4(2), third indent, and Article 4(3), second subparagraph, of Regulation 1049/2001.

Finally, Article 4(2), second indent of Regulation 1049/2001 provides that “[t]he institutions shall refuse access to a document where disclosure would undermine the protection of: [...] court proceedings and legal advice.” In the case at hand, the refusal of access to a part in the document concerned is based on a need to protect pending court proceedings. The information included in this undisclosed part of the document contains analysis of the Commission regarding key issues in the pending Case T-709/21, in which the Court is expected to deliver landmark decisions concerning the functioning of the consistency mechanism under the General Data Protection Regulation. Disclosure of the redacted part of the document concerned could compromise the position of the Commission in that case. As recognized by the CJEU, the exception provided for in Article 4(2), second indent of Regulation 1049/2001 covers not only the interests of the parties in the context of court proceedings, but more generally the proper conduct of judicial proceedings. In the case at hand there is a risk that public disclosure of the redacted part in question would result in undermining the serenity of the proceedings and the principle of the sound administration of justice.

### **Protection of personal data**

A complete disclosure of the identified documents is prevented by the exception concerning the protection of privacy and the integrity of the individual outlined in Article 4(1)(b) of Regulation (EC) No 1049/2001, because it contains personal data.

Article 9(1)(b) of the Data Protection Regulation<sup>2</sup> does not allow the transmission of these personal data, except if you prove that it is necessary to have the data transmitted to you for a specific purpose in the public interest and where there is no reason to assume that the legitimate interests of the data subject might be prejudiced. In your request, you do not express any particular interest to have access to these personal data nor do you put forward any arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest.

Consequently, I conclude that, pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, access cannot be granted to the personal data contained in the requested documents, as the need to obtain access thereto for a purpose in the public interest has not been substantiated and there is no reason to think that the legitimate interests of the individuals concerned would not be prejudiced by disclosure of the personal data concerned.

In case you would disagree with this position, you are entitled, in accordance with Article 7(2) of Regulation (EC) No 1049/2001, to submit a confirmatory application requesting the Commission to review this position.

Such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the Secretariat-General of the Commission at the following address:

European Commission  
Secretariat-General  
Unit C.1. ‘Transparency, Document Management and Access to Documents’

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<sup>2</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, OJ L 295, 21.11.2018, p. 39.

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B-1049 Brussels, or by email to: [sg-acc-doc@ec.europa.eu](mailto:sg-acc-doc@ec.europa.eu)

We would appreciate if you could confirm receipt of the present e-mail by replying to: [JUST-C4@ec.europa.eu](mailto:JUST-C4@ec.europa.eu).

Yours faithfully,

*(e-signed)*  
Ana Gallego